



California Integrated Waste Management Board



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September 22, 2003

Christopher M. Westhoff
Assistant City Attorney
Room 700
City Hall East
200 N. Main Street
Los Angeles, CA 90012

SENT BY FACSIMILE

Re: Clarification Regarding the Los Angeles Area Regional Agency

Dear Mr. Westhoff:

As we agreed in our telephone conversation on September 12th, I am writing to seek clarification regarding some issues that have come up in relation to the Los Angeles Area Regional Agency (LARA). Before discussing specific areas in which the California Integrated Waste Management Board (CIWMB) seeks clarification, I wanted to respond to the concerns that you so strongly expressed regarding why these issues are important to the CIWMB.

Significance of Issues to the CIWMB

As I mentioned in our conversation, in March, when we first discovered that three of the proposed members of the LARA had been issued Compliance Orders by the CIWMB, we contacted Karen Coca, the LARA's representative, to inform her that including these three members in the LARA would mean that the CIWMB would have to issue a Compliance Order to the LARA at the same time that it would be approved. In that conversation, we asked about the possibility of not including these three members in the LARA until their Compliance Orders had been completed. Her response at that time was two-fold: having these cities in the LARA would better enable her to help them meet the requirements of their Compliance Orders; and, removing them from the LARA would take too long.

The membership and/or status of these three cities is significant to the CIWMB for a variety of reasons. As expressed by Board Members during their consideration of the LARA at their July meeting, the CIWMB wants to ensure that these cities will not be implementing fewer or less extensive diversion programs as members of the LARA than they would be if they were not members. This is consistent with the legislative intent expressed in Public Resources Code

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section 40970. At that July meeting, Ms. Coca assured the CIWMB that this was not the intent of the LARA and pointed out that the Joint Powers Agreement indicated that each member would continue to be responsible for implementing their programs.

The CIWMB Board Members also expressed concern about whether its staff would be able to determine individual city's levels of program implementation since the CIWMB would be receiving only one annual report instead of fifteen. Ms. Coca indicated that even though the LARA would submit only one annual report, CIWMB staff would still have access to information on the status of individual city's diversion progress when reviewing program implementation.

In asking the CIWMB to approve the LARA, Ms. Coca was asking the CIWMB to rely on the provisions of its Joint Powers Agreement and on her representations of how the LARA would operate. Since that time, one of the members with a Compliance Order, Gardena, has apparently been asked to voluntarily withdraw from the LARA on short notice, although the agreement requires 180 days notice. This also appears to conflict with Ms. Coca's statement in March that removing members with Compliance Orders would take too long. In addition, we have received letters of clarification from a majority of the members of the LARA indicating that the effective date of the agreement is not until the date of approval by the CIWMB, although previous communications gave the impression that the LARA was an approved, existing, and operating entity. The CIWMB needs to obtain clarification on how the LARA operates and will operate in the future, before it can vote on the whether or not to approve the LARA as a Regional Agency.

I have attempted below to capture what I believe to be the issues that need clarification. As you will see, many of the questions depend upon the answers to previous questions, making for a seemingly complex set of issues. Please feel free to contact me to discuss them before responding in writing.

Is the LARA's Joint Powers Agreement currently in effect or not?

The CIWMB has been operating under the impression that the LARA was an existing approved Joint Powers Authority. On January 30, 2003, the CIWMB received a letter announcing the formation of the "LARA, a Joint Powers Authority..." This agreement was approved by all of the member City Councils at formal public meetings. Additionally, Ms. Coca had informed the CIWMB staff that all communication with member cities could be channeled through her as she was the LARA administrator. The versions of the agreement that we have received do not expressly mention a later effective date, but simply have a blank space for the effective date of the agreement. In electronic mail to the Board, Ms. Coca indicated that the effective date had not been filled in because each City signed at a different time.

If the LARA's Joint Powers Agreement is not currently in effect, the CIWMB will need to comply with specified conferring and notice requirements with respect to each member for the issuance of Compliance Orders unless waivers can be provided. Can such waivers be provided?

As we discussed, for the past six months, the CIWMB was under the impression that the LARA was an existing body and accordingly communicated with it and its members through Ms. Coca. These communications included required notifications regarding the pending issuance of a Compliance Order to the LARA. Public Resources Code section 41825 provides that the CIWMB must provide a 60 day conferring period and a 30 day Notice of Intent prior to issuing a Compliance Order. If the LARA is not an effective body yet, then the CIWMB will need to provide these notice periods to each of the members prior to issuance of a Compliance Order to the LARA. This would delay the CIWMB's consideration of the LARA. As we also discussed, one potential method to avoid this delay would be to have each of the members of the LARA provide a written waiver of their rights to the conferring and notice periods. If the individual cities were to choose to provide these waivers, I would request that we discuss the specific contents of the waivers in advance so that we can assure that they meet the needs of the CIWMB.

If the LARA is currently in effect, is there an amendment to the Joint Powers Agreement that has not yet been provided to the CIWMB?

In our conversation, you indicated that you thought the Joint Powers Agreement contained wording to the effect that it was not effective until approved by the CIWMB. When I noted that the versions of the agreement that we have received do not expressly mention this, but simply have a blank space for the effective date of the agreement, you indicated that you thought we would be getting an agreement with this wording. To date, we have not received a revised version.

Alternatively, are you considering the letters of clarification from a majority of the members of the LARA to constitute an amendment to the Joint Powers Agreement?

In our conversation, you seemed to indicate that a majority of the members of the LARA could amend the Joint Powers Agreement at any time. The letters that we have received from a majority of the members provide that the effective date of the Joint Powers Agreement is the approval date by the CIWMB and that Gardena has voluntarily withdrawn from the LARA. Do you consider that these letters represent an amendment to the Agreement? If so, do you intend to simply append these letters to the existing Agreement rather than provide a revised agreement?

If you consider these letters to be amendments to the Joint Powers Agreement, is there a potential problem given that the letters are not from the respective City Councils of the members?

The original agreement was approved by the respective City Councils of the members, but these letters are signed by a variety of city staff including a Deputy Public Works Director and a Solid Waste Manager. If this is an amendment, do these individuals have the authority to do approve one?

Is there a difference in the process between amending the Joint Powers Authority and terminating a member?

The Joint Powers Agreement provides that "A vote by a majority of the Members is needed to terminate the agreement with respect to a Jurisdiction" (Section 12.3); and, "This Agreement may be amended or modified at any time, ... with the written consent of a majority of the Member Jurisdictions with the Regional Agency" (Section 16). These provisions appear to be describing two different processes. Ms. Coca indicated in July that an amendment to the agreement would require going back to the member's City Councils. Does the difference between these provisions relate to whether the process is by the LARA representatives or by the respective City Councils?

If you consider the letters of clarification to be amendments to the Joint Powers Agreements, is this process to amend the agreement only available until the CIWMB approves the LARA, or would it continue afterwards?

The provisions in the agreement about program implementation do not explicitly mention Compliance Order or Plan of Correction programs. The CIWMB would prefer to have these provisions to be explicit, but was told, as noted above, that an amendment to the agreement would require going back to the member's City Councils. Has there been a change of opinion about this issue? In addition, the Joint Powers Agreement mentions nothing about reports of individual program implementation that wouldn't be included in the Annual Report as separate items. Could this language be included in the agreement? If included, could it be done in a way to ensure that these added provisions could not be amended after CIWMB approval?

How do the draft by-laws impact the Joint Powers Agreement?

We have received a copy of the draft by-laws. These contain provisions that seem to conflict with the Joint Powers Agreement. Which controls and how will the draft by-laws be adopted?

One additional issue that I wanted to mention, as of the date of this letter, the CIWMB had not received a copy of a letter of withdrawal from the LARA by the City of Gardena referenced in the clarification letters from the LARA members. Given the importance of the withdrawal to the composition of the LARA, I would like to specifically request that we receive a copy of Gardena's withdrawal.

I believe that your response to the issues noted above will significantly aid the CIWMB in understanding the LARA so that its consideration of it may move forward. If you have any questions, please feel free to contact me at (916) 341-6080. Thank you for your cooperation.

Sincerely,



Elliot Block
Staff Counsel